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09/550,049	04/14/2000	David R. MacLean	0100/0091	8335
21395 7590 07/26/2007 LOUIS WOO LAW OFFICE OF LOUIS WOO 717 NORTH FAYETTE STREET ALEXANDRIA, VA 22314			EXAMINER GRAY, PHILLIP A	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/550,049
Filing Date: April 14, 2000
Appellant(s): MACLEAN, DAVID R.

**MAILED
JUL 26 2007
GROUP 3700**

David MacLean
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 03/15/2007 appealing from the Office action mailed 12/18/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6575941	Mumford	6-2003
5135209	Olliffe	8-1992

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 22-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Mumford (U.S. Patent Number 6,575,941). Mumford discloses a safety device (as in figures 8 and 9) comprising a collar (lower portion of element 2 or 40), a neck (middle portion of element 2) extending from collar, a housing (6) pivotable connected to neck, a latch member (upper portion of element 2) integrated to neck and flexible relative to collar, wherein when said collar is placed about a vial (as in figure 1b) and moved toward hub (110) of said vial (114) said latch member is latched onto another end of the hub (as in figure 1B). Further Mumford teaches integral hooks on the housing (50 in in figure 10a) for lockingly gripping.

Claims 22 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Olliffe (U.S. Patent Number 5,135,509). Olliffe discloses a safety device (as in figures

8c) comprising a collar (lower portion of element 8 surrounds hub), a neck (middle portion extending from element 8) extending from collar, a housing (7) pivotable connected to neck, a latch member (upper portion of element 8, below hub 25) integrated to neck and flexible relative to collar, wherein device is fully capable of the function of when said collar is placed about a vial and moved toward hub (toward bottom of figure 8c) said latch member is latched onto another end of the hub.

(10) Response to Argument

Applicant's first argument is directed to towards the rejection under 35 U.S.C. 102(e) as being anticipated by Mumford (U.S. Patent 6,575,941). It is applicant's argument that Mumford fails to disclose a (1) vial and (2) a collar that slides over the vial, (3) "a latch member extending from the neck member in a direction towards the center of the collar", and (4) "when the collar placed about the vial is moved toward a hub[or one end of the hub] of the vial, the latch member would latch onto another end of the hub when the collar is adjacent to the one end of the hub.

Examiner's position is that, as explained in the previous non-final rejection, Mumford discloses a safety device (as in figures 8, 9 and 1B for instance) comprising a **collar** (lower portion of element 2, bottom plane of element), a **neck** (middle portion of element 2, upward side walls) extending from collar, a **housing** (6) pivotable connected to the neck, a **latch member** (upper portion of element 2, upper plane element with circular aperture) integrated to neck and flexible relative to collar, wherein when said collar is placed about a vial (as in figure 1b) and moved toward hub (110) of said vial

(114) said latch member is latched onto another end of the hub (as in figure 1B). Further Mumford teaches integral hooks on the housing (50 in in figure 10a) for lockingly gripping.

It is examiner position that a collar, neck, housing, and latching member are clearly shown in Mumford. Examiner has not interpreted the claims to be positively claiming the "vial" but merely that the claimed safety device is intended to be used with the vial. It is examiners position that this is shown in figures 1A and 1b for instance.

During examination, claim limitations are to be given their broadest reasonable reading. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); In re Prater, 415 F.2d 1393, 1404-1405, 162 USPQ 541, 550-51 (CCPA 1969). Examiner is giving a broad definition to the word "latch" and "vial". For "latch" the examiner is using the definitions of "to grab, attach, or hold onto"; and for "vial" the definitions of "a small vessel especially for liquids".

It is examiners position that the applicant has not positively claimed in the safety device that it contains the element of a "vial" rather that the device (and it's element) are capable of operation in the claimed limitation manner with a vial (as in claim 22). In claim 25 "...said latch member continuously biases against body of a vial when said collar is placed about said vial and moved towards one end of a hub of said vial"... Again examiner is not viewing the "vial" to be positively claimed as an element of the safety device rather that the latching member is capable of this function/operation on a vial and hub device (viewing that clause as a function of the latch member, not positively claiming the vial).

Arguendo, even if viewed that they are positively claimed Mumford does disclose a (1) vial (114, 10 or 112 for examples) and hub (110) and the latch and collar element are capable of the function/operation of the claims. Specically Mumford device would have a vial, (discussed above) a collar that slides over the vial (part which goes over the vail hub (fig 1A), "a latch member extending from the neck member in a direction towards the center of the collar"(figure 4 and 8 how the Mumford device attaches to the vial and hub, and (4) "when the collar placed about the vial is moved toward a hub[or one end of the hub] of the vial, the latch member would latch onto another end of the hub when the collar is adjacent to the one end of the hub (see figure 4, 1a, or 1b).

Under this analysis all the **claimed** elements are disclosed in Mumford and those elements are fully capable of satisfying all structural, functional, spatial, and operational limitations in the claims, as currently written.

Applicant's second argument is directed to towards the rejection under 35 U.S.C. 102(b) as being anticipated by Olliffe (U.S. Patent Number 5,135,509). It is applicant's argument that Olliffe fails to disclose a latch member that extends from the neck in the direction towards the center of the collar and and that the collar is placed about the vial and moved towards the hub of the vial.

Examiner's position is that, as explained in the previous non-final rejection, Olliffe discloses a safety device (as in figures 8c) comprising a **collar** (lower most portion of element 8 surrounds hub), a **neck** (middle portion extending from element 8, upward extending sidewall), a **housing** (7), a **latch member** (upper portion of element

8, below hub portion 25 which is in a latching state in figure 8C and that is holding the housing open and on the hub) integrated to neck and flexible relative to collar, wherein device is fully capable of the function of when said collar is placed about a vial and moved toward hub (toward bottom of figure 8c) said latch member is latched onto another end of the hub. This vial attaching function could be accomplished if the Olliffe device was placed on the device in a housing down state.

It is examiner position that a collar, neck, housing, and latching member are clearly shown in Olliffe. Examiner has not interpreted the claims to be positively claiming the "vial" but merely that the claimed safety device is intended to be used with the vial. It is examiners position that this would be carried out when the device is connected to a syringe (a type of vial or container).

As explained above, during examination, claim limitations are to be given their broadest reasonable reading. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); In re Prater, 415 F.2d 1393, 1404-1405, 162 USPQ 541, 550-51 (CCPA 1969). Examiner is giving a broad definition to the word "latch" and "vial". For "latch" the examiner is using the definitions of "to grab, attach, or hold onto"; and for "vial" the definitions of "a small vessel especially for liquids".

It is examiners position that the applicant has not positively claimed in the safety device that it contains the element of a "vial" rather that the device (and it's element) are capable of operation in the claimed limitation manner with a vial (as in claim 22). In claim 25 "...said latch member continuously biases against body of a vial when said collar is placed about said vial and moved towards one end of a hub of said vial"...

Again examiner is not viewing the “vial” to be positively claimed as an element of the safety device rather that the latching member is capable of this function/operation on a vial and hub device. Arguendo, even if viewed that they are positively claimed Olliffe does disclose connecting the safetydevice to a type of “vial” a syringe barrel (as stated in applicant’s appeal brief on page 12) and hub (25) and the latch and collar element are capable of the function/operation of the claims. Examiner considers a syringe barrel to be a small vessel especially for liquids or a “vial”.

Specically Olliffe device would also have a collar that slides over the syringe barrel and hub (25), “a latch member extending from the neck member in a direction towards the center of the collar”(figure 8c and the latching piece that holds the housing open and attaches the device under the ridge of Olliffe hub 25) and “when the collar placed about the syringe and hub it is moved toward a hub of the vial”. It is examiners position that the claims *do not* require the collar to be placed bout the vial/syringe/hub, in a specific direction (proximal/distal) or order, simply that the collar be placed on the vail/syringe barrel and that the latch member is on another end of the hub.

Under this analysis all the **claimed** elements are disclosed in Olliffe and those elements are fully capable of satisfying all structural, functional, spatial, and operational limitations in the claims, as currently written.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Phillip Gray



Conferees:

Kevin Sirmons


Janet Baxter

KEVIN C. SIRMONS
SUPERVISORY PATENT EXAMINER

